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Superior Court of California,  
County of San Diego  
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Clerk of the Superior Court  
By Melinda McClure, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION

Kate Burdge, an individual; Chris Davis, an individual, Kaveh Hedayatzadeh, an individual, and Aaron Schlosser, an individual; each individually and on behalf of all similarly situated and/or aggrieved employees of DEFENDANTS,

Plaintiffs,

vs.

Votem EC, Inc., a Delaware corporation, Votem Corp., a Delaware corporation, Pete Martin, an individual, and DOES 1 through 10 inclusive,

Defendants.

Case No. 37-2019-00017723-CU-OE-CTL

**CLASS ACTION COMPLAINT**

[Code Civ. Proc. § 382]

1. Failure to Timely Pay All Wages Due Upon Separation of Employment; (Labor Code § 201).
2. Failure to Provide Adequate Notice of Mass Lay-Off (Labor Code § 1400 et seq.)
3. Fraudulent Misrepresentation

1 Plaintiffs Kate Burdge, Chris Davis, Kaveh Hedayatzadeh, and Aaron Schlosser  
2 individually and on behalf of all similarly situated and/or aggrieved employees of Defendants  
3 complain:

4 **INTRODUCTION**

5 1. Plaintiffs Kate Burdge, Chris Davis, Kaveh Hedayatzadeh, and Aaron Schlosser  
6 bring this individual and putative class action against Defendants Votem EC, Inc. (hereinafter,  
7 “Votem EC”), Votem Corp., Pete Martin, and DOES 1 through 10, inclusive for (a) the failure to  
8 timely pay wages due upon Plaintiffs involuntary separation of employment in violation of  
9 California Labor Code sections 202 and 204, (b) the failure to provide the notification required by  
10 the California Labor Code section 1400 *et seq.*, the Worker Adjustment and Retraining  
11 Notification Act (CAL-WARN), and (c) the fraudulent misrepresentations by Pete Martin as an  
12 representative of Votem Corp. and Votem EC.

13 2. Plaintiffs bring this action on behalf of all former employees who were employed  
14 by Votem EC in the state of California and whose employment was terminated during the time  
15 period of January 19, 2019 through February 18, 2019 (hereinafter, the “relevant time period”) and  
16 did not receive from Defendants all wages due upon termination and/or who did not receive from  
17 Defendants 60-days’ notice of their termination.” (hereinafter, “aggrieved employees”).

18 3. Plaintiffs seek to recover, *inter alia*, unpaid wages, interest, statutory damages,  
19 attorney’s fees, and costs pursuant to California Labor Code sections 201, 203, 204, 218.5, 218.6,  
20 1402, and 1404, among others.

21 4. Plaintiffs reserve the right to name additional representatives.

22 **PARTIES**

23 **A. Plaintiffs**

24 5. Plaintiff Kate Burdge, at all relevant times herein, was an employee of Defendants  
25 and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La Jolla, CA  
26 92037.

27 6. Kate Burdge is a resident of the State of California and the Defendants’ conduct, as  
28 alleged herein, occurred in the County of San Diego.

1       7.     Kate Burdge was laid off by Defendants on or about February 15, 2019, without  
2 notice, and was not and has not been paid the wages due upon the termination of her employment.  
3

4       8.     Kate Burdge is an “aggrieved employee” within the meaning of Labor Code section  
5 2699(c) because she was employed by Defendants and suffered one or more of the Labor Code  
6 violations committed by the Defendants.

7       9.     Plaintiff Chris Davis, at all relevant times herein, was an employee of Defendants  
8 and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La Jolla, CA  
9 92037.

10      10.    Chris Davis is a resident of the State of California and the Defendants’ conduct, as  
11 alleged herein, occurred in the County of San Diego.

12      11.    Chris Davis was laid off by Defendants on or about February 15, 2019, without  
13 notice, and was not and has not been paid the wages due upon the termination of his employment.  
14

15      12.    Chris Davis is an “aggrieved employee” within the meaning of Labor Code section  
16 2699(c) because he was employed by Defendants and suffered one or more of the Labor Code  
17 violations committed by the Defendants.

18      13.    Plaintiff Kaveh Hedayatzadeh, at all relevant times herein, was an employee of  
19 Defendants and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La  
20 Jolla, CA 92037.

21      14.    Kaveh Hedayatzadeh is a resident of the State of California and the Defendants’  
22 conduct, as alleged herein, occurred in the County of San Diego.

23      15.    Kaveh Hedayatzadeh was laid off by Defendants on or about February 15, 2019,  
24 without notice, and was not and has not been paid the wages due upon the termination of his  
25 employment.

1       16. Kaveh Hedayatzadeh is an “aggrieved employee” within the meaning of Labor  
2 Code section 2699(c) because he was employed by Defendants and suffered one or more of the  
3 Labor Code violations committed by the Defendants.

4       17. Plaintiff Aaron Schlosser, at all relevant times herein, was an employee of  
5 Defendants and worked at Defendants’ office location at 4250 Executive Square, Suite 600, La  
6 Jolla, CA 92037.

7       18. Aaron Schlosser is a resident of the State of California and the Defendants’ conduct,  
8 as alleged herein, occurred in the County of San Diego.

9       19. Aaron Schlosser was laid off by Defendants on or about February 15, 2019, without  
10 notice, and was not and has not been paid the wages due upon the termination of his employment.

11       20. Aaron Schlosser is an “aggrieved employee” within the meaning of Labor Code  
12 section 2699(c) because he was employed by Defendants and suffered one or more of the Labor  
13 Code violations committed by the Defendants.

14       21. At all relevant times, Plaintiffs and, on information and belief, the aggrieved  
15 employees of Defendants in California were subject to the same policies, practices, and procedures  
16 governing their employment and their payment of wages earned and hours worked.

17       **B. Defendants**

18       22. Votem EC is a Delaware corporation, now headquartered in Cleveland, Ohio, but  
19 at all times relevant herein was headquartered in San Diego, California. Votem EC provides  
20 election management services to business and government entities.

21       23. Votem Corp. is a Delaware corporation headquartered in Cleveland, Ohio and the  
22 parent company of Votem EC.

23       24. Pete Martin is the Chief Executive Officer, Chief Financial Officer, and Secretary  
24 of Votem EC. Pete Martin is also the Chief Executive Officer of Votem Corp and, on information

belief, a direct or indirect owner of Votem Corp.

25. The true names and capacities of the Defendants named as DOES 1 through 10, inclusive, are presently unknown to Plaintiffs. Plaintiffs will amend this Complaint, setting forth the true names and capacities of the fictitious Defendants when their names are ascertained. Plaintiffs are informed and believe, and on that basis alleges, that each of the fictitious Defendants participated in the acts alleged in this Complaint.

26. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether named or fictitious, were employers, as defined under the California Labor Code, of Plaintiffs and the aggrieved employees as Defendants exercised control over Plaintiffs' and the aggrieved employees' wages, hours of work and/or working conditions and was the alter ego of each of the other Defendants.

27. Plaintiffs are informed and believe that at all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of every other Defendant, and in committing the violations alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of each other Defendant.

28. Plaintiffs are further informed and believe that at all relevant times, each Defendant, whether named or fictitious, acted as the agent for the other Defendants in carrying out a joint scheme, business plan or policy, and that a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer and that the acts of each Defendant are legally attributable to all other Defendants.

## JURISDICTION AND VENUE

29. This Court has subject-matter jurisdiction to hear this case because Plaintiffs are informed and believe that the monetary damages and restitution sought herein for Defendants' conduct exceeds the minimum jurisdictional limits of the Superior Court.

30. Venue is proper in the Superior Court of the County of San Diego pursuant to Code of Civil Procedure section 395, subdivision (a) as none of the Defendants presently reside in the State of California and all of the Plaintiffs currently reside in the County of San Diego.

## **CLASS REPRESENTATION ALLEGATIONS**

31. Plaintiffs bring this action as a class action proposes the following class:

All former employees of Votem EC who were laid off between the period of January 19, 2019 through February 18, 2019, who were not paid all wages due as of that date and/or who were not given 60 days' notice of the termination of their employment.

32. Plaintiffs exclude entities in bankruptcy, entities whose obligations have been discharged in bankruptcy, governmental entities, and judicial officers who preside over this case.

33. Plaintiffs maintain the right to create additional subclasses or classes, if necessary, and to revise these definitions to maintain a cohesive class that does not require individual inquiry to determine liability.

34. The exact number of class members is unknown to Plaintiffs at this time, but such information can be ascertained through appropriate discovery, specifically from records maintained by Votem EC, Votem Corp. and/or its agents. Upon information and belief, the number of putative members of the class exceeds 60 members.

# **EXISTENCE AND PREDOMINANCE OF COMMON QUESTIONS OF LAW AND FACT**

35. There are common questions of law and fact common and of general interest to the class. These common questions of law and fact predominate over any questions affecting only individual members of the class. Such common questions include, but are not limited to, the following:

- a. Whether, as successor in interest of Everyone Counts, Votem EC's San Diego offices was a "covered establishment" as defined by California Labor Code section 1400 subdivision (a);
- b. Whether, as successor in interest of Everyone Counts, Votem EC is an "employer" as defined by California Labor Code section 1400 subdivision (b);
- c. Whether there was a "mass layoff" as defined by California Labor Code section 1400 subdivision (c);
- d. Whether Pete Martin and Votem Corp. are "employers" as defined by the California Labor Code and thus liable for the violations complained of herein.
- e. Whether Defendants' failure to pay wages to the class members required under California Labor Code section 201 was willful;
- f. Whether during the corporate-wide events, Pete Martin made materially false representations to class members as to the financial health of Votem EC; and
- g. Whether during corporate-wide teleconferences, Pete Martin made materially false representations to class members as to the financial health of Votem EC.

36. Questions of law and fact predominate over any questions affecting only individual members.

## TYPICALITY AND NUMEROSITY

37. The claims of the named Plaintiffs are typical of the claims of the respective class. Upon information and belief, the total number of members of each putative class exceeds 60 members and is so numerous that separate joinder of each member is impracticable.

## ADEQUATE REPRESENTATION

38. Plaintiffs will fairly and adequately protect the interests of the members of the class and have no interest antagonistic to those of other class members. Plaintiffs have retained class

1 counsel competent to prosecute class actions, and such class counsel is financially able to represent  
2 the classes.

3 **SUPERIORITY**

4 39. The class action is superior to other available methods for the fair and efficient  
5 adjudication of this controversy since individual joinder of all members of the class is  
6 impracticable. The interests of judicial economy favor adjudicating the claims for the Plaintiffs  
7 class rather than on an individual basis. The class action mechanism provides the benefit of unitary  
8 adjudication, economies of scale and comprehensive supervision by a single court.

9 **GENERAL ALLEGATIONS**

10 40. Everyone Counts, Inc. (hereinafter, "Everyone Counts") was a Delaware  
11 corporation, headquartered in California, that developed voting-related Internet-based products  
12 (e.g., online Emmy voting, state voter registration).

13 41. Plaintiffs are informed and believe that, in 2018, Everyone Counts had  
14 approximately 75 employees, at least ten of which were hourly non-exempt employees and the  
15 remaining were salaried, exempt employees.

16 42. On or about October 2, 2018, Everyone Counts was acquired through an asset  
17 purchase agreement by Votem Corp.

18 43. Votem Corp. formed Votem EC, and, after the completion of the asset purchase  
19 agreement, Votem EC, as successor in interest to Everyone Counts, hired nearly all the Everyone  
20 Counts employees to perform the same functions that had performed for Everyone Counts,  
21 including Plaintiffs and, upon information and belief, the aggrieved employees.

22 44. Pete Martin was the Chief Executive Officer of Votem EC and traveled to San  
23 Diego California to work and interact with the Votem EC employees, almost all of whom work in  
24 San Diego California, including Plaintiffs and, on information and belief, the aggrieved  
25 employees.

26 45. On or about November 16, 2018, Votem EC failed to pay some of its exempt  
27 employees on the scheduled pay date but did so several days later. Because of this delay, most

1 employees, including Plaintiffs and, upon information and belief, the aggrieved employees became  
2 concerned about the financial health of Votem EC.

3       46.      In December 2018, at a corporate-wide event in San Diego, California, attended by  
4 Plaintiffs and, upon information and belief, the aggrieved employees and by Pete Martin, Pete  
5 Martin attempted to assuage the employees' concerns, stating that the prior payroll problem was  
6 simply a glitch and that the financial health of Votem EC was strong.

7       47.      Between January 2019 and February 2019, Votem EC conducted weekly corporate-  
8 wide teleconferences that were attended by Plaintiffs and, upon information and belief, the  
9 aggrieved employees. During each of these teleconferences, Pete Martin continued to misrepresent  
10 that the financial health of Votem EC was strong and that the company had a six-month financial  
11 runway. The last of these teleconferences occurred on or about February 8, 2019, only days before  
12 the company closed its doors.

13       48.      Pete Martin was well aware that the Votem EC's financial health was dire. On one  
14 occasion, Pete Martin borrowed money, on behalf of Votem EC, from one of the company's  
15 officers to cover payroll and on another occasion, borrowed money, on behalf of Votem EC from  
16 a high-interest lender to make payroll.

17       49.      On or about February 15, 2019, without any notice, Defendants laid off its entire  
18 workforce, including Plaintiffs and, upon information and belief, the aggrieved employees, and,  
19 failed to pay the wages due to those employees in violation of the California Labor Code. Plaintiffs  
20 are informed and believe that over 60 employees were laid off.

21       50.      Because no notice was given as required by the California Labor Code and because  
22 Pete Martin continued to misrepresent the health of Votem EC, even days before the company  
23 closed its doors, Plaintiffs and, upon information and belief, the aggrieved employees were all  
24 taken by surprise.

25       51.      Plaintiffs and, upon information and belief, the aggrieved employees had not  
26 planned for this eventuality and remained unemployed for a period after they were laid off, which  
27 could have been avoided had Pete Martin not made these misrepresentations.  
28

## **CAUSES OF ACTION**

## **FIRST CAUSE OF ACTION**

## **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

(Violation of Labor Code §§ 201 and 203)

(Alleged by all Plaintiffs Individually and on behalf of the Class Members  
against all Defendants)

52. Plaintiffs re-allege and incorporate the allegations contained in the paragraph above, as though fully set forth herein.

53. Plaintiffs and the aggrieved employees are former employees of Defendant Votem EC in California within the meaning of employee under the Labor Code.

54. Upon information and belief, Plaintiffs and the aggrieved employees are former exempt and non-exempt employees of Defendants Votem Corp and Pete Martin in California within the meaning of employee under the Labor Code.

55. Labor Code section 201(a) provides that “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

56. Labor Code section 203(a) states, in relevant part, “[i]f an employer willfully fails to pay without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

57. Upon the mass layoff in February 2019, Defendants willfully failed to pay Plaintiffs and, on information and belief, the aggrieved employees all wages due and owing to them, within the time required by Labor Code section 201.

58. To date, Defendants have yet to pay Plaintiffs and, on information and belief, the aggrieved employees, the full amount of all wages due and owing to them.

59. As a direct result of Defendants' violations alleged herein, Plaintiffs and, upon information and belief, the aggrieved employees suffered and continue to suffer losses related to the use and enjoyment of wages due and owing to them, including lost interest on such monies and

expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

60. Plaintiffs intend to provide notice to the Labor and Workforce Development Agency and Defendants of the above violations under Code of Civil Procedure section 2699.3 subdivision (a)(1) and, if warranted, may seek to amend this complaint under that Code of Civil Procedure section 2699.3 subdivision (a)(2) to recover civil penalties.

## **SECTION CAUSE OF ACTION**

## **FAILURE TO PROVIDE NOTICE OF A MASS LAYOFF**

(Violation of California Labor Code §§ 1401 and 1402)

(Alleged by all Plaintiffs Individually and on behalf of the Class Members  
against all Defendants)

61. Plaintiffs re-allege and incorporate the allegations contained in the paragraph above, as though fully set forth herein.

62. Plaintiffs and the aggrieved employees are former employees of Defendant Votem EC in California within the meaning of employee under the Labor Code.

63. Upon information and belief, Plaintiffs and the aggrieved employees are former employees of Defendants Votem Corp and Pete Martin in California within the meaning of employee under the Labor Code.

64. Plaintiffs are informed and believe that, as successor in interest of Everyone Counts, Defendants are employers under California Labor Code section 1400 subdivision (b).

65. Plaintiffs are informed and believe that Votem EC's offices in San Diego are a "covered establishment" under California Labor Code section 1400 subdivision (a).

66. Plaintiffs are informed and believe that Defendants ordered a mass layoff under California Labor Code section 1400 subdivision (d), laying off over 60 employees in February 2019.

1       67. California Labor Code section 1401 provides in part that “[a]n employer may not  
2 order a mass layoff, relocation, or termination at a covered establishment unless, 60 days before  
3 the order takes effect, the employer gives written notice of the order.” Defendants did not comply  
4 with the notice requirements of California Labor Code section 1401.

5       68. Defendants' failure to comply with California Labor Code section 1401 makes  
6 them liable for statutory damages under California Labor Code section 1402, including back pay  
7 and the cost of any benefits to which an employee would have been entitled.

8       69. Defendants' failure to comply with California Labor Code section 1401 makes  
9 Defendants liable for civil penalties under California Labor Code section 1403.

10       70. As a direct result of Defendant's violations alleged herein, Plaintiffs and, upon  
11 information and belief, the aggrieved employees suffered from their lack of employment caused  
12 by the lack of notice, and seek the statutory penalties owing to them, including lost interest on such  
13 monies and expenses and attorney's fees in seeking to compel Defendants to fully perform its  
14 obligation under state law, all to their respective damage in an amount to be shown according to  
15 proof at trial and within the jurisdictional limitations of this Court.

16       71. Plaintiffs intend to provide notice to the Labor and Workforce Development  
17 Agency and Defendants of the above violations under Code of Civil Procedure section 2699.3  
18 subdivision (a)(1) and, if warranted, may seek to amend this complaint under that Code of Civil  
19 Procedure section 2699.3 subdivision (a)(2) to recover civil penalties.

## **THIRD CAUSE OF ACTION**

# FRAUDULENT MISREPRESENTATION

(Alleged by all Plaintiffs Individually and on behalf of Class Members

against all Defendants)

25           72. Plaintiffs re-allege and incorporate the allegations contained in the paragraphs  
26 above, as though fully set forth herein.

73. Plaintiffs and the aggrieved employees are employees of Defendants in California  
within the meaning of employee under the Labor Code.

1           74. Upon information and belief, Plaintiffs and the aggrieved employees are former  
2 employees of Defendants Votem Corp and Pete Martin in California within the meaning of  
3 employee under the Labor Code.

4           75. Defendants, through there agent, Pete Martin, made several fraudulent  
5 misrepresentations to Plaintiffs and, upon information and belief, the aggrieved employees.

6           76. These fraudulent misrepresentations include that, in December 2018, at a corporate-  
7 wide event in San Diego, California, attended by most of Votem EC's employees and by Pete  
8 Martin, Pete Martin stated that the prior payroll problems were a glitch and that the financial health  
9 of Votem EC was strong.

10          77. These fraudulent misrepresentations include that, between January 2019 and  
11 February 2019, Votem EC conducted weekly corporate-wide teleconferences. During each of these  
12 teleconferences, Pete Martin misrepresented that the financial health of Votem EC was strong and  
13 that the company had at least a six-month financial runway. The last of these teleconferences  
14 occurred on or about February 8, 2019, only days before the company closed its doors.

15          78. Defendant Pete Martin knew the Votem EC's financial health was dire and that  
16 these representations were false.

17          79. Defendant Pete Martin made these misrepresentations intending that Votem EC  
18 employees would rely on these misrepresentations, continue to work and not seek alternative  
19 employment.

20          80. Plaintiffs, and upon information and belief, the aggrieved employees did rely on  
21 these misrepresentations, continued to work and did not seek alternative employment.

22          81. As a direct result of Defendants' violations alleged herein, Plaintiffs and the  
23 aggrieved employees suffered (a) from their lack of employment after being terminated by  
24 Defendants, and (b) from Defendants failure to pay them wages due upon their termination of  
25 employment due to Votem EC's financial condition.

26          82. Plaintiffs and the aggrieved employees seek damages for the back wages remaining  
27 due as well as lost wages cause by their subsequent loss of employment resulting from Defendants'  
28 misrepresentations.

83. Defendants actions alleged above are willful, wanton, malicious, and oppressive to justify the award of punitive damages.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs prays for judgment against Defendants as follows:

- a. For general, special, and punitive damages;
- b. For an award of damages for unpaid wages;
- c. For statutory damages, including but not limited to those provided for under California Labor Code sections 203 and 1402;
- d. For civil penalties, including but not limited to those provided for under California Labor Code sections 210 and 1403;
- e. For reasonable attorney's fees, costs of suit, and interest to the extent permitted by law, including but not limited to those provided for under to Code of Civil Procedure section 1021.5 and California Labor Code sections 218.5, 218.6, and 1404;
- f. For pre- and post-judgment interest; and
- g. For any other relief that the Court deems just and proper.

## **DEMAND FOR JURY TRIAL**

Plaintiffs and members of the Class hereby request a trial by jury of all issues triable by jury.

Respectfully submitted,

DATED: April 4, 2019

By: *John K. Landay*  
John K. Landay, Esq.  
LANDAY ROBERTS, LLP  
Attorneys for Plaintiff